appear that the condition was part of a scheme to monopolize, and no greater restrictions are laid down than necessary for the plaintiff's interest. Doubtless the decision can be explained because of the modern horror of forfeiture with the consequent willingness of the courts to stretch a point, if necessary, to avoid it. *Cf. Clement* v. *Burtis*, 121 N. Y. 708, 24 N. E. 1013.

ESTATES IN FEE SIMPLE — DETERMINABLE FEES IN AMERICA — PROPERTY TAKEN BY EMINENT DOMAIN. — Land belonging to the plaintiff was taken by a railroad by eminent domain proceedings under a statute which provided that the railroad should be "seised in fee . . . and hold and use for the purposes specified." The railroad when it no longer needed the land for its purpose sold it to the defendant. *Held*, that the railroad having only a determinable fee, on the abandonment the plaintiff was entitled. *Lithgow* v. *Pearson*, 135 Pac. 759 (Colo.).

Property can be taken by eminent domain proceedings for public purposes only. *In re Tuthill*, 163 N. Y. 133, 57 N. E. 303; *Edgewood Railway Company's Appeal*, 79 Pa. 257. Consequently merely such an interest in the property should be taken as is necessary to carry out the public purpose. *Conklin* v. *Old Colony R. Co.*, 154 Mass. 155, 28 N. E. 143; *Kansas Central Ry. Co.* v. *Allen*, 22 Kan. 285. It has been held that the legislature should be the judge of what this interest is. *Fairchild* v. *City of St. Paul*, 46 Minn. 540, 49 N. W. 325. The majority of courts, however, construe eminent domain statutes as authorizing the condemnation only of an easement. *Proprietors of Locks and Canals* v. *Nashua and Lowell R. R. Co.*, 104 Mass. 1; *Kellogg* v. *Malin*, 50 Mo. 496. Where the taker is the state or municipality, the fee simple is often held to pass. *Haldeman* v. *Penn. Central R. R.*, 50 Pa. 425; *Malone* v. *Toledo*, 34 Oh. St. 541. The principal case using the machinery of a determinable fee to accomplish the desired limitation of the interest seems to have but little following. *Matthieson & Hegeler Zinc Co.* v. *La Salle*, 117 Ill. 411, 8 N. E. 81. The effect of the Statute of *Quia Emptores* was to destroy the tenure formerly existing between the grantor of a fee simple and his grantee and therefore theoretically determinable fees can no longer be created where *Quia Emptores* is in force, as is the case in nearly all American jurisdictions. See GRAY, RULE AGAINST PERPETUITIES, §§ 31–41 a, 774–788; 17 HARV. L. REV. 297–316. But if a statute can be construed to authorize the creation of such an interest in certain cases it may be argued that it has to that extent repealed *Quia Emptores*. If this is sound it would seem that eminent domain statutes of the type in the principal case have created an exception to the general rule in favor of landowners whose property is taken by condemnation proceedings. It must furthermore be admitted that apart from any statutory provisions there is a tendency in the United States to ignore the theoretical difficulties and allow determinable fees in all cases. *First Universalist Society* v. *Boland*, 155 Mass. 171, 29 N. E. 524.

INTERSTATE COMMERCE — CONTROL BY STATES — RAILROAD REGULATION — REGULATIONS BY STATE COMMISSION AS TO DEMURRAGE. — The Michigan Railroad Commission passed certain demurrage rules applicable to all traffic beginning or ending within the state. These rules allowed shippers from one to three days longer for loading and unloading goods than the rules of the Interstate Commerce Commission. The plaintiff filed a bill to restrain the state commission from enforcing its rules. *Held*, that the commission will be enjoined. *Michigan Central R. Co.* v. *Michigan R. Commission*, 20 Det. Leg. News 946 (Sup. Ct., Mich., Oct. 11, 1913).

The court is right in holding that the rules are unconstitutional so far as they apply to interstate traffic, as being a regulation of interstate commerce as such. *Wabash, St. Louis & Pacific R. Co.* v. *Illinois*, 118 U. S. 557. See

Minnesota Rate Cases, 230 U. S. 352, 415–416, 33 Sup. Ct. 729, 747. The court further says that the rules would be unconstitutional even if applied only to intrastate traffic. But it has been decided that a state can regulate the rates of interstate carriers as to intrastate traffic. *Minnesota Rate Cases, supra.* And it is submitted that the slight holding up of interstate cars that might result from the longer time allowed by the state demurrage rules would be a less material interference with interstate commerce than the regulation of intrastate rates. The court in the principal case curiously relies on one of the federal court decisions (*Shepard* v. *Northern Pacific R. Co.*, 184 Fed. 765), which was reversed by the Supreme Court in the *Minnesota Rate Cases*. Assuming that the rules in question would be constitutional if applied solely to intrastate traffic, the question presents itself, whether the rules can be separated and upheld as to the constitutional part. This problem of splitting a statute seems to depend on whether it can reasonably be assumed that the legislature would have preferred the statute to be partially effective rather than entirely null. See *The Employers' Liability Cases*, 207 U. S. 463, 501. Whether we attribute to the Commission in the principal case a desire to bear down on the railroads or to benefit the people of the state, it can reasonably be presumed that a partially effective statute would have been preferred to one void *in toto*. If this is so, it would seem that the statement of the court as to intrastate traffic is not a mere *dictum* but a holding *contra* to the *Minnesota Rate Cases*. (For a discussion of those cases, see article, 27 HARV. L. REV. 1.) If the Wisconsin court's holding that the entire statute is unconstitutional is erroneous, nevertheless it is not open to review by the United States Supreme Court for the reason that there is no denial of any federal right claimed by the defeated litigant.

LIBEL AND SLANDER — PLEADING AND PROOF — APPLICATION TO PLAINTIFF. — The defendant, a physician, told of an experience in his practice with a young woman. He named no one and did not mean the plaintiff. The plaintiff, however, proved that people thought the story was about her. *Held*, that the defendant is entitled to a peremptory instruction. *Newton* v. *Grubbs*, 159 S. W. 994 (Ky.).

In the principal case no name was mentioned. It is, however, a sufficient description of the plaintiff if the hearers reasonably suppose that the plaintiff is referred to. *Hird* v. *Wood*, 38 Sol. J. 234; *Le Fanu* v. *Malcolmson*, 1 H. L. C. 636. But the court regards intention on the part of the defendant as necessary, interpreting too literally the requirement that the words be "published of and concerning the plaintiff." *Hanson* v. *Globe Newspaper Co.*, 159 Mass. 293, 34 N. E. 462. But this requirement, on logic and authority, only means that the jury must find that reasonable hearers under the circumstances would so understand the words. Intent to refer to the particular plaintiff is not necessary. *Taylor* v. *Hearst*, 107 Cal. 262, 40 Pac. 392; *Farley* v. *Evening Chronicle Pub. Co.*, 113 Mo. App. 216, 87 S. W. 565. Any doctrine of non-liability for negligent use of language refers to the action of deceit, not to defamation. Defamation is an action at peril. *Peck* v. *Tribune Co.*, 214 U. S. 185, 29 Sup. Ct. 554. The law seems to have reached the stage where those who utter defamatory statements that may reasonably be applied to some innocent person must stand the consequences if that person is injured thereby.

LIBEL AND SLANDER — REPETITION — LIABILITY FOR PRIVILEGED REPETITION. — The defendant told the father of the plaintiff's fiancée that the plaintiff was already married. The father repeated this to his daughter, whereby the marriage was delayed until the charge was disproved. *Held*, that the defendant is liable for the repetition. *Bordeaux* v. *Joles*, 25 West. L. R. 894 (Sup. Ct. of Alberta).

The general rule is that there is no liability for the repetition by others of